

Victorian Community Solar Alliance

Submission to the Essential Services Commission's Review of Energy Licences in Victoria

August 2015

**This submission is supported by members of the
Victorian Community Solar Alliance:**

- 1. Ballarat Renewable Energy and Zero Emissions (BREAZE)**
- 2. Bendigo Sustainability Group**
- 3. Energy Innovation Cooperative (auspicing Gippsland Community Energy)**
- 4. Geelong Sustainability Group**
- 5. Goulburn Valley Community Energy**
- 6. Locals Into Victoria's Environment (LIVE)**
- 7. Macedon Ranges Sustainability Group (Woodend Integrated Sustainable Energy - WISE)**
- 8. Melbourne Community Power**
- 9. Moreland Community Solar**
- 10. Moreland Energy Foundation Limited (MEFL)**
- 11. Solar Citizens**
- 12. Surf Coast Energy Group**
- 13. Yarra Community Solar**

Executive Summary

This submission to the Essential Services Commission's review of energy licences in Victoria has been prepared by the Victorian Community Solar Alliance. It is in response to the Commission's June 2015 Issues Paper "Modernising Victoria's Energy Licence Framework", as well as to issues canvassed at a meeting between representatives of the Alliance with the Commission on 31 July 2015.

We have developed our response to address the specific needs of Community Solar Organisations (CSOs) working towards the establishment of community-owned solar installations in Victoria. Our response provides a detailed explanation of the business model that supports Community Solar projects to provide a context for how changes to the licensing framework would affect the operations and the financial viability of Community Solar in Victoria

The groups all recognise that the requirement to have a licence to generate, distribute and sell electricity is an important obstacle to establishing Community Solar projects. It is a barrier not faced by CSOs in NSW and other states.

The Victorian Community Solar Alliance believes there are no sound reasons why Victorian CSOs should be licensed to sell electricity, and the Alliance strongly favours provision of an exemption consistent with the practice of the Australian Energy Regulator (AER).

Our submission shows that CSOs are not offering an "essential service" to their customers – the roof-host for the community-owned solar array. The roof-host will continue to rely on electricity from the authorised retailer, because the solar supply will be less than their consumption most, if not all of the time.

Nevertheless if an Essential Services Commission (ESC) licence was to be required, it is essential that the licence framework is very simple and inexpensive and leaves Victorian Community Solar enterprises no worse off than our colleagues interstate. The Proposed Small Scale Activity Licences currently do not pass this test.

It is worth noting that the development of Community Solar is more advanced in NSW, where CSOs are able to apply for an exemption from the requirement to be licensed. This licence exemption process is a simple, straightforward process with no costs attached.

CSOs are not only small in scale, they also operate on very small margins. A licensing process that is complex for community organisations to navigate, or the addition of licence fees, would undermine the viability of Community Solar in Victoria, if not kill it off altogether.

In summary, our response is broken into seven specific areas of focus which help to explain in more detail how we have come to our position:

- Background to community solar in Victoria
- Background to community solar in New South Wales
- Community Solar: Why Licensing is not required
- Regulation of alternative energy sellers under National Energy Retail Law
- What type of authorisation could work for Community Solar in Victoria
- Could a Community Solar organisation act in a way that is detrimental to the objectives of the Essential Services Commission
- Issues with the Proposed ESC Small Scale Activity Licence

Our submission also provides clear recommendations for the authorisation of Community Solar to operate.

On behalf of the community solar groups we thank you for the opportunity to respond to the Essential Services Commission Review and look forward to working with you in the future.

Recommendations

In this submission the Victorian Community Solar Alliance argues that obtaining authorisation for a CSO to operate should be no more onerous, time-consuming or costly to obtain in Victoria than it is for equivalent community solar enterprises in NSW, Qld, the ACT, SA and Tasmania, under the jurisdiction of the AER. To this end the Alliance recommends that:

1. the Government provides an exemption for CSOs written in plain English that would not require legal advice to interpret and would avoid any uncertainty both now and in the future as the Community Solar sector evolves.
2. determination of an exemption is based on the business model proposed by the CSO
3. the ESC provides an confirmation in writing, if requested by a CSO, that the business model would be exempt. Current ESC practice is to not provide an opinion on whether an enterprise is exempt. Given the nature of CSOs it is vital that they are able to obtain clear, authoritative advice that they are authorised to operate.

If the Government does not provide an exemption from the requirement for a licence for Community Solar Organisations it is essential that:

1. the ESC provides a stripped down licence to CSOs, which is easy to apply for, involves no application or licence fees
2. the conditions imposed on such a licence be the same as those applicable to a licence exemption issued by the Australian Energy Regulator on CSOs interstate. See *Appendix three* for amendments to the ESC's draft licence that would meet these requirements.

1. Community Solar in Victoria

What is a Community Solar Organisation?

The Victorian Community Solar Alliance knows of currently about 15 Community Solar Organisations (CSOs) working towards the establishment of community-owned solar installations in Victoria. Community Solar is an emerging sector, in which small community organisations are grappling with the complex commercial, legal and regulatory framework involved.

Groups are typically small in scale and made up of people from all walks of life, working together as volunteers, with few resources to support their work. Most groups are motivated primarily by environmental and community-building objectives, and are seeking to mobilise local community involvement and interest in renewable energy.

They are social enterprises that aim to increase the amount of solar power in their local communities, by bringing solar power within the reach of more local organisations. The capital funding required is raised through donations or through small-scale ethical investment, resulting in an income to the organisation to support further local sustainability activities or offering a very modest return to member-shareholders respectively.

Most groups to date are either Incorporated Associations or Co-operatives, reflecting their motivations. Some have added community solar to an existing suite of local community sustainability initiatives, while others have been established solely as a vehicle to drive the establishment of community-owned solar in their community.

Scope of activities

The emerging Community Solar sector in Victoria is envisaged as comprising simple volunteer-driven organisations owning and operating technically and financially straightforward solar systems for community benefit. Most importantly the electricity that will be generated is not the main electricity supply to the property hosting the community-owned roof-top solar array. The default supplier will remain the licensed retailer. As a result these organisations are not offering an “essential service”.

Common characteristics of Community Owned Solar projects

There is no unique description that will adequately cover all Community Solar projects, but they do share a number of common essential characteristics.

- Capital funds are obtained from the community
- The funds raised are used to install a solar system on the roof of a third party organisation, which might be a community building (kindergarten, community centre), a public building (municipal library, local utility) or a local business
- The systems envisaged are not technically complex, comprising only roof-top solar panels and an inverter
- Electricity generated by the roof solar system is used on-site by the third party “roof host”, and is only a proportion of the roof host’s daily demand
- The CSO is not the primary retail supplier of electricity to the roof host and aims for 100% consumption of electricity “behind the meter”¹
- Most systems are envisaged to be less than 100kW because of the arrangements under the Renewable Energy Target

¹ Although projects will aim for 100% of the electricity to be used “behind the meter” inevitably some surplus would be sold to the grid

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- The roof host makes payments to the CSO based on the solar energy consumed in accordance with a Solar Power Purchase Agreement
- Those who initiate, drive and govern CSOs are volunteers – i.e. they earn nothing from their sometimes significant efforts
- Organisational objectives focus on the environment and the community - building community awareness of the advantages of renewable energy, mobilising community involvement in local enterprises, securing local employment, increasing access to solar power and accelerating the take-up of renewable energy
- Most, if not all, work undertaken by the CSO is through contracts with third parties including:
 - Solar system planning and installation
 - Solar system maintenance
 - Financial auditing
 - Insurance
 - Back-office administration (or may be undertaken by volunteers)
- Obtaining legal advice is often beyond the reach of the CSO, due to lack of funds. Some groups have obtained pro bono advice but this has not always proved satisfactory, with at least one group having been offered advice that has subsequently been shown to be unsafe.

Business models

This submission provides case-studies of the two main Community-Owned Solar business models that the Alliance is aware of in Victoria: the donations model and the small-scale investment model.

To date in Victoria, the donations model has been successfully implemented at one site, while the investment model is yet to be implemented. There are a number of groups close to realising plans for projects, such as Yarra Community Solar and Moreland Community Solar. The requirement for an Essential Services Licence is currently a major factor in stalling the establishment of these latter projects.

The case studies show that the operations and business models of CSOs are not only small in scale, they also operate on very small margins. The effect of adding the cost of licence fees would be to undermine the financial viability of Community Solar in Victoria, if not kill it off altogether.

- Donations model

The donations model involves members of the community making a donation to the community solar organisation to enable the installation of a solar system on a community or public building. To date in Victoria this model has been successfully implemented by the Bendigo Sustainability Group (BSG), which has raised \$32,000 and installed a 20kW solar array on the Bendigo Library.

BSG is a membership based not-for-profit community organisation operating as a company limited by guarantee. It is an Income Tax Exempt Charity (ITEC) with Deductible Gift Recipient (DGR) status.

BSG has two agreements with the Bendigo Council who are the owners of the library. In the first agreement BSG pay the Council a peppercorn rent to lease the space occupied by the solar installation. The second is a Power Purchase Agreement between the two parties. The Council is invoiced quarterly based on the energy consumed. All work undertaken to administer this arrangement is done by volunteers.

An illustration of this model is shown at *Appendix One: Business Models Case Studies: Yarra Community Solar & Bendigo Sustainability Group*.

<http://www.bsg.org.au/258/>

https://www.bendigo.vic.gov.au/About_the_City/News_and_Engagement/Media_Releases/New_solar_power_system_for_Bendigo_Library#.VcF6xvmqpBc

- Small-scale investment model

The small-scale investment model involves members of the community investing in the CSO. This investment enables the installation of a solar array on the roof of a local business, community organisation or public body. The roof host pays the CSO for the electricity generated and consumed according to a Solar Power Purchase Agreement. Payments by the roof host enable a small return to be paid to investors as well as the return of capital. Once sufficient profits has been made to fully pay all debts related to the project and return all funds provided by project investors, ownership of the equipment will transfer from the CSO to the roof host. In summary the business model comprises the following steps:

1. CSO forms agreements with roof owner.
2. Community Investment.
3. CSO buys, installs and owns solar panels.
4. CSO sells power to roof owner and grid².
5. CSO receives revenue from power sale.
6. CSO pays dividend and returns capital to community investors.
7. Ownership transfers from CSO to roof owner.

For full details see *Appendix One* which provides a full description of the Yarra Community Solar Business Model, including projected income and expenditure in the first year.

A variant to the investment model is the 'loans model' through which community members lend the CSO the funds required to install the solar system. All the steps listed above are the same except that the community investment is replaced by loans from community members, which are repaid along with a small interest payment.

The similarity between the small-scale investment model and the loans model highlights a key point. The sale of energy from a CSO to a roof host is an alternate means by which a loan can be repaid. In the investment model the usage and charge per kW determine the amount repaid while in a loan model it is the rate of interest.

In this regard the sale of electricity is incidental to a key intent, which is to enable a roof host to obtain ownership of a solar installation. The valid concerns that the Victorian government has to ensure the efficient, fair and secure operation of the electricity industry are not relevant to these arrangements.

Future developments in Community Solar

Due to legislative impediments Community Solar in Victoria is yet to fully establish itself, therefore it is difficult to forecast where future developments may lead.

Two developments appear likely though-

- Battery storage - as the storage of energy becomes a financially viable option for more businesses it is likely that battery packs and the equipment to manage energy storage will be included in the investment financed by CSOs.

Including battery storage as part of a solar power purchase agreement is unlikely to create a need for a licence. It is possible that the roof host would go off grid following the installation of a

³ See footnote 2 above

solar array and battery pack in which case the CSO would be the sole supplier of electricity to the roof host. At this stage the Alliance is unaware of any CSO contemplating such an arrangement. It would breach the proposed exemption or licence conditions that we are proposing and as a consequence we would not enter into such a contract.

- Virtual net metering (VNM) - if VNM is implemented in Victoria then it is highly likely that CSOs would seek to sell surplus solar energy using this mechanism rather than receive a feed in tariff.

The implementation of VNM in Victoria will require legislative change and community discussion. CSOs would be part of that process and it would be appropriate to review the licensing and exemption framework applicable to CSOs should the business model change as a result of VNM implementation.

The development of any new business models by CSOs would necessitate further discussion with the Essential Services Commission and the State Government.

2. Community Solar projects in NSW

The development of Community Solar is more advanced in NSW, where CSOs are able to apply for an exemption from the requirement to be licensed. The licence exemption process for CSOs is a simple, straightforward process with no costs attached. The following projects are two examples:

Repower Shoalhaven <http://www.repower.net.au/>

Lismore Community Solar <http://farmingthesun.net/>

3. Community Solar: why licensing is not required

The Victorian Community Solar Alliance believes there are no sound reasons to require CSO's to be licensed to sell electricity. There are a range of reasons to support the provision of an exemption consistent with the practice of the Australian Energy Regulator (AER), including that it would be consistent with the objectives of the Essential Services Commission (ESC).

A licence to operate a community solar business may be appropriate if a poorly implemented community solar business or businesses could adversely affect consumers and there were no other remedies available to them. But other remedies are available to consumers including under the *Australian Consumer and Competition Act 2010*, Australian Consumer Law and state fair trading legislation³.

Likewise a licence may be appropriate if a CSO could adversely affect the electricity network. This is unlikely in the extreme, as even if every CSO conducted business in an irresponsible manner the electricity supply of the state would not be affected in any way⁴.

The main reason for this is that CSOs are not offering an “essential service” to their customers. The CSO is not the main, authorised retailer to a property. The CSO aims to sell all or virtually all, of the electricity generated by the solar array mounted on the customer’s roof to the customer. This “behind the meter” supply is usually scaled so that the supply from the array is consumed on-site, minimising the need to export to the grid. The customer will continue to rely on electricity from the authorised retailer, because the solar supply is likely to be less than the roof-host’s consumption most, if not all of the time.

³ Dealing with misleading, deceptive or unconscionable conduct; unfair contract terms, marketing, warranties and guarantees; and dispute resolution and complaints respectively

⁴ Any network management issues that might be anticipated as a result of the increase in the use of renewable energy are considered a separate issue to the consideration of the Community Solar business model.

Because the CSO is small in scale, is not the main retailer of electricity to the consumer and can have no discernible negative impact on the operation of the electricity network, the Victorian Community Solar Alliance argues that there is no need to licence the operation of this type of business model.

What authorisation is appropriate for Community Solar?

The Victorian Community Solar Alliance argues that whatever form of authorisation is required for Community Solar to operate, it should be no more onerous, time-consuming or costly to obtain than it is for equivalent community solar enterprises in NSW, Qld, the ACT, SA and Tasmania, which are under the jurisdiction of the AER.

The Alliance appreciates that there is a different framework for licensing and exemption in Victoria to elsewhere. In other parts of Australia the AER is responsible for deciding both which businesses must be licensed and which are exempt from this requirement. Whereas in Victoria the ESC is responsible for licensing while the State Government decides on exemptions from the requirement to be licensed.

Nonetheless we can see no reason for arrangements that are inconsistent in outcome and process to those enjoyed by our equivalent organisations interstate. This is best achieved through an exemption to the requirement for a licence or, less desirably through the development of a significantly scaled back licence that has similar characteristics to the AER requirements for CSOs.

4. Regulation of alternative energy sellers under National Energy Retail Law

It is quite easy for CSOs to obtain authorisation to operate in other states because they come under the jurisdiction of the Australian Energy Regulator (AER), and the AER has a simple, straightforward approach to community solar.

The AER explains its approach in the following way:

“However, customers do not need the same level of protection from an energy seller where there is no risk of (disconnection) happening, for instance where a seller is providing an optional, discretionary service to customers.”

(AER Statement of Approach: Regulation of alternative energy sellers under National Energy Retail Law, p7)

“Our view is that a customer who buys electricity through an SPPA (solar power purchase agreement) does not need the same level of protection for that service as a customer who buys electricity from an authorised retailer and that applying the same or a comparable level of customer protections through the exemption conditions is excessive and not justified.

Exemptions are granted on the basis of an entity’s business model (that is, the business model does not necessitate a full retailer authorisation). In other words, it is a seller’s business model that is exempted, not the seller per se.

We have therefore placed an obligation on SPPA providers’ exemptions that states that they are conditional upon the exempt seller:

- *refraining from registering in the wholesale market for the purposes of purchasing energy*
- *not being the financially responsible market participant for the premises (rather, this must be an authorised retailer). “*

(AER Statement of Approach: Regulation of alternative energy sellers under National Energy Retail Law, p9)

More detail is available at Appendix two where the AER's "Principles for regulating alternative energy sellers" is reproduced.

The process for authorisation of Community Solar Organisations in other States

In NSW, the ACT, Tas, Qld & SA community solar groups can apply for an exemption from the need to obtain a licence to sell electricity by taking these simple and straightforward steps:

1. Contact the AER for guidance in making an application
2. Complete a simple application form providing information about the organisation and the nature and scope of operation
3. Lodge the application
4. The AER publishes a notice on their website inviting submissions regarding the application. Consultation period runs for at least 20 days
5. AER makes its decision and advises of any conditions that may be attached to an exemption

5. What type of authorisation could work for Community Solar in Victoria?

There are two approaches that could work for Community Solar in Victoria

- 1) Government provides an exemption for CSOs written in plain English that would not require legal advice to interpret and the ESC provides a written opinion if requested by a CSO, as to whether the activity planned by the CSO would be exempt
- 2) ESC provides a stripped down licence to CSOs. To be workable such a licence would have to be easy to apply for, involve no application or licence fees and have conditions that were the same as those imposed on exempt organisations by the AER. At *Appendix three* the VCSA has developed amendments to the ESC's draft licence that would meet these requirements.

Our preference is for the first option as CSOs are not providing an essential service hence there is no need to be licensed.

In addition, Division 5 of the Electricity Industry Act 2000 (EIA), imposes a number of statutory conditions on licence holders. Unless the EIA is amended, a Community Solar licence holder would be required to comply with a number of both onerous and for a CSO and the community, irrelevant, statutory requirements, as well as their specific licence conditions⁵. Achieving legislative changes to the EIA will, if successful, further delay the commencement of community solar activity in Victoria.

The exemption process under current law involves an organisation self-assessing that they are exempt. It is essential that an exemption for Community Solar is written in clear and plain language to avoid any uncertainty both now and in the future as this sector evolves.

Further, we believe that the government should instruct the ESC to provide written advice upon request as to whether an organisation's intended activity is exempt. We make this point for two reasons:

- While the ESC has responsibility to police these exemptions, current ESC policy is that they do not provide an opinion on potential breaches. We understand that this policy was developed to deal with unrelated issues.
- Such an arrangement would have similar affect to the outcomes CSOs obtain under AER jurisdiction. This approach is completely consistent with the objectives of the ESC in Victoria.

⁵ These include a requirement for licence holders to publish their tariffs and terms and conditions online (via the Commission and on its own website), in a newspaper and in the Government gazette; a requirement that tariffs and terms and conditions must not be inconsistent with those of the Commission (potentially requiring compliance with the Energy Retail Code); the payment of compensation for any wrongful disconnection of customers; and prevention of fees for late payment.

6. Could a Community Solar Organisations act in a way that is detrimental to the objectives of the Essential Services Commission?

The objectives of the ESC (sections 8 and 8A of the Essential Services Commission Act 2001) are to promote the long term interests of Victorian consumers, and the ESC must have regard to the price, quality and reliability of essential services.

Section 8A identifies a number of matters that must be considered to the extent relevant in any matter:

- efficiency in the industry and incentives for long term investment
- financial viability of the industry
- the degree and scope of competition, particularly in relation to countervailing market power and information asymmetries
- benefits and costs of regulation on regulated entities
- consistency in regulation between states and on a national basis

Essential Services Commission issues licences for the electricity industry in Victoria enabling it to monitor, review, regulate and oversee organisations operating in the industry, presumably to achieve its objectives.

Licensing of organisations is clearly required where either the scale or impact of potential breaches by an organisation is significant.

There would be a case for licensing CSOs if they were to conduct business in a manner detrimental to their customers, and as a corollary, to the objectives of the ESC, as this would provide the ESC with the power to remedy the situation.

It can be easily shown that the activities of a CSO do not have the potential to cause harm to either their customers or the electricity network that would require licensing regulation. Indeed the successful operation of CSO's in Victoria is aligned with a number of the ESC's objectives:

- Activities of CSO's could not conceivably adversely affect the efficiency of the electricity industry. CSO's will bring additional funds into the electricity industry by funding solar installations, which must all be installed in accordance with applicable regulations.
- The financial viability of the electricity industry in Victoria will not be adversely affected by CSO's. If a CSO becomes bankrupt the viability of the industry will not be affected nor will the supply of power to a customer.
- The entry of CSO's into the electricity marketplace can only enhance competition in the electricity market. In the relationship between a CSO and a roof host there is no need to create a countervailing market power or to deal with information asymmetries. Unlike most transactions in the electricity market between a supplier and a customer, when a CSO enters into a contract with a customer it is likely to be a contract between a small community-owned enterprise and another small community organisation (kindergarten, community centre etc), a larger public body (Municipality, publicly-owned utility etc) or a medium-sized or even a large company.
- It is hard to imagine any benefits that could accrue to a small-scale Community-Owned Solar enterprise as a result of being licensed, provided a framework is in place that removes any doubts that licensing is required. Finance for Community Solar enterprises are obtained from the community rather than finance institutions. Provided it can be easily shown there is no doubt about the legality of the Community Solar operation, the absence of a licence will not inhibit investment by community members. In addition, the existing legislative framework for companies and cooperatives combined with the requirements of Australian consumer and competition law ensure that a CSO will conduct business appropriately, and remedies exist if they do not.

- There will be many costs to a CSO if it is regulated in the manner proposed by ESC. Based on the proposal put by the ESC a licensed CSO will need to meet the requirements of both the Electricity Distribution Code and the Energy Retail Code. These are documents that are currently 47 and 112 pages in length. A review of these two codes has identified respectively 18 and 20 potential issues with the codes that when combined would ensure that a CSO would not be able to operate in Victoria. These issues are attached at *Appendix four*.
- The proposed licensing arrangements are completely at odds with those administered by the Australian Energy Regulator (AER) in NSW, Queensland and South Australia. The AER's approach is described earlier in this document. While the powers of the ESC differ to those of the AER, a similar outcome to the administration of license exemptions can be achieved. All that is required is that a regulation exempting CSOs be put into effect and the ESC be instructed to provide a formal opinion on request as to whether an organisation's proposed activity is exempt or not.

7. Issues with the Proposed ESC Small Scale Activity Licence

The ESC has proposed to make it simpler for CSOs to obtain a licence and has published a number of small scale licences as examples of what may be available.

But the conditions attached to these proposed licences are such that it would be impossible for a CSO to conduct business and meet the conditions set. In fact no responsible organisation with the CSO business model would apply.

The Victorian Community Solar Alliance argues that the scale, nature and scope of community solar enterprises do not justify any requirement for them to obtain a licence. But, if an ESC licence was to be required, it is essential that the licence framework is very simple and inexpensive and leaves Victorian Community Solar enterprises no worse off than their colleagues interstate. The draft licences currently don't pass this test.

The proposed arrangements for Community Solar are inconsistent with other states and this is not only inequitable. They would also stifle the development of Community Solar in Victoria and as outlined above, the approach is contrary to the ESC's own objectives.

This section of our submission elaborates on the barriers the proposed licence represents to CS, commenting on the proposed "Licence to Generate, Supply, Distribute or Supply and Sell Electricity" as this is more than likely the one that community solar groups would apply for.

Legal Support Required

The document requires assistance from a lawyer experienced in these matters to understand it. For CSOs that have few funds it is unlikely that such advice would be affordable, and so raises a barrier to entry for community solar groups.

Finance

The proposed licence states that the licensee must have sufficient financial resources to conduct business. This implies that the community organisation obtains funds from investors before it commences business. The current business model of a number of community solar groups does the reverse. This model has them entering into a contract with a roof host, completing a disclosure statement or prospectus concerning a project, obtaining regulatory approval for the document and then seeking funds from investors. This approach has worked successfully on a number of projects in New South Wales recently.

Technical capability

A condition of the proposed licence is that the licensee must be technically capable of complying with the conditions of the licence. In section 1 of this document we have outlined the business model, which involves the contracting out of all technical aspects of the project to qualified suppliers.

It is unclear why a CS organisation itself would be required to have the technical capacity to comply with the licence. All technical aspects of a project will be covered contractually with qualified third parties.

Specified Regulatory Instruments

Licensees will be required to comply with 2 specified regulatory instruments - the Electricity Distribution Code and the Energy Retail Code. *Appendix four* identifies 38 separate issues that, based on the operating of model of many CSOs, means that they could not comply with the required licence conditions and no responsible CSO would therefore apply.

Licence Fee

Any cost to be paid by a CSO will diminish its competitive position. The amount to be paid is unspecified and could over the life of a project could change thereby affecting the payback period included in the prospectus/disclosure statement. The requirement to pay for a licence again puts the ESC at odds with the national regulatory framework, where no fees are paid by Community Solar enterprises in states where the AER determines licence arrangements.

National metering identifiers (NMI)

In the proposed licence, the licensee is required to allocate a unique NMI to metering equipment. There appears to be no need for a CSO to have to obtain an NMI as all activity will be "behind the meter".

Contracts

Clauses 13 & 16 of the proposed Licence would require CS enterprises to have a 'standing offer in the market place' if they were to advertise to "Relevant Customers". The definition of "Relevant Customers" has been specified by an Order in Council and would cover all customers whose likely energy use is 40 megawatt hours or less per annum. In other words CSOs would be required to provide a standing offer to all customers in Victoria with energy use under this threshold. Clearly CSOs are in no position to supply electricity so widely. CSOs can only offer electricity a customer with whom they sign a power purchase agreement and then only if they obtain sufficient funding from the community to purchase the solar array. The effect of these clauses is that CSOs would not operate in Victoria.

Appendix One: Business Models Case Studies

Yarra Community Solar & Bendigo Sustainability Group

Yarra Community Solar Co-op Ltd. (YCS) was established as a registered trading co-operative in 2014. The intended business model for YCS is illustrated in Fig 1 below along with a description of the major activities.

Fig 1: Business model Yarra Community Solar

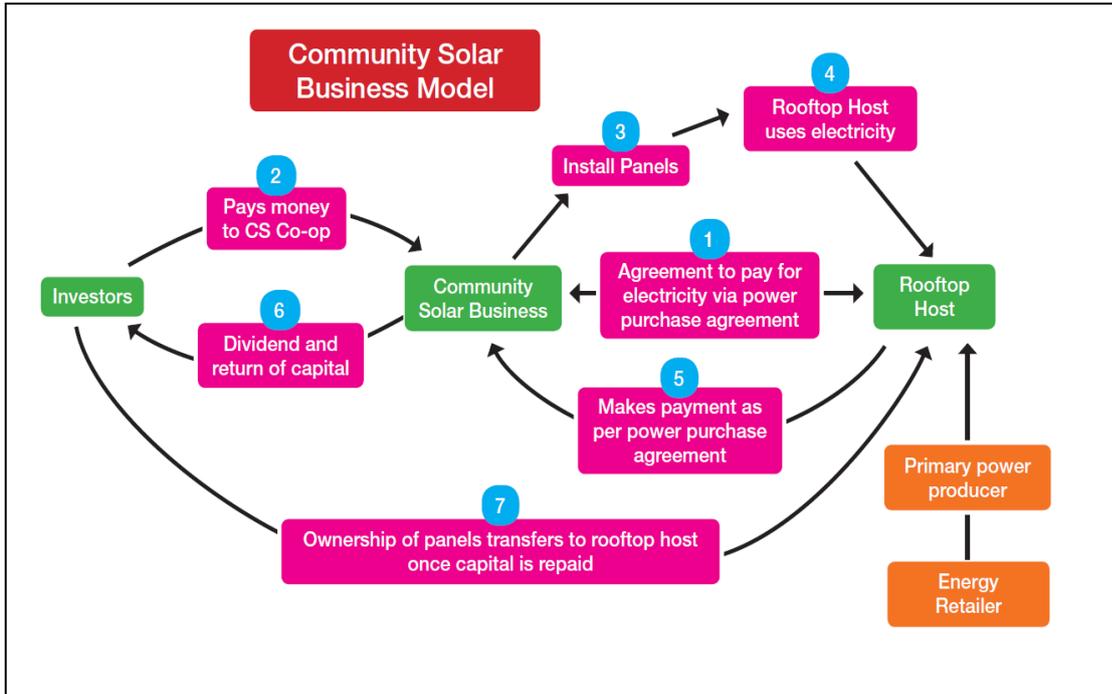
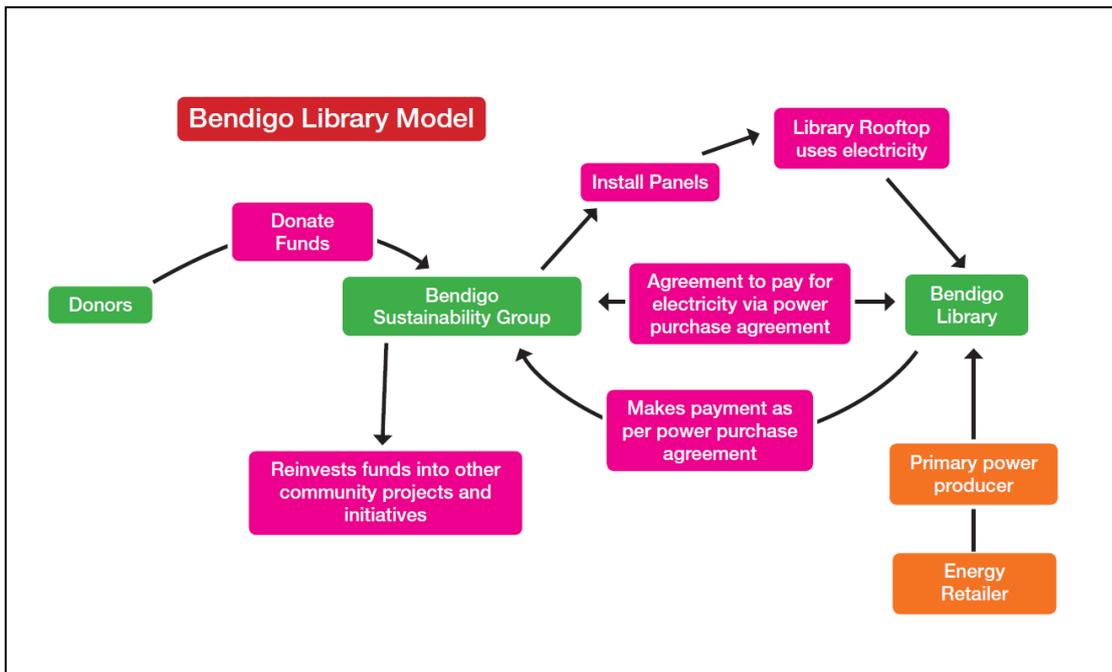


Fig 2: Business model Bendigo Sustainability Group



The business model planned by Yarra Community Solar is as follows:

1. **Yarra Community Solar (YCS) forms agreements with roof owner.** YCS will enter into a solar power purchase agreement (SPPA) with a suitable roof owner where YCS installs solar panels on the roof. The roof owner will pay YCS for electricity generated by these panels, as determined by a Power Purchase Agreement.
2. **Community Investment.** Members of the community will be invited to become members and shareholders of YCS, providing investment for the capital required for individual solar installation projects. Under Co-operative rules members will be able to purchase shares up to no more than 20% of the total share value. YCS envisages a minimum shareholding of around \$2,500; and other Coops envisage different minimum shareholdings (e.g. Moreland Community Solar's minimum shareholding will be \$500).
3. **YCS buys, installs and owns solar panels.** YCS will use the funds provided by the community to purchase and install the solar panels as agreed. The equipment and the installers will be selected from a panel of suppliers selected by YCS. The criteria for selection of suppliers and a list of those selected will be shown in an Appendix to the project Disclosure Document.
4. **YCS sells power to roof owner (and the grid)⁶.** The panels generate electricity that is used by the roof owner who pays YCS at a rate per kW specified in the SPPA .
5. **YCS Receives revenue from power sale.** Information from the inverter will be electronically sent to the admin service provider who will generate an invoice, deduct funds from the roof owner's bank account and will transfer them to YCS's account. Surplus electricity will be sold back to grid at the prevailing feed in tariff.
6. **YCS Pays dividend and returns capital to community investors.** The only costs YCS anticipate incurring following the installation of the equipment are maintenance at 1% of capital cost per annum, a community donation at 2% of revenue per annum, annual admin service cost of \$5,500 in the first year, annual audit fees, some marketing and incidental costs and tax. An indicative profit and loss statement is shown below. Out of the anticipated profits YCS intends to pay an annual dividend and an annual return of capital in accordance with the policy described below. The intent is to return capital to investors as quickly as possible.
7. **Ownership transfers from YCS to roof owner.** Once YCS has made sufficient profits to fully pay all debts related to the project and return all funds provided by project investors, in accordance with the terms of its SPPA with the roof host, ownership of the equipment will transfer from YCS to the roof host. YCS will then extinguish the shares for this project. The timeframe involved will be dependent upon the capital cost of the equipment, the energy use of the roof host and the rate for kW paid. It is hoped that this transfer will occur in about 7 years.

YCS and Community Involvement. Each year YCS intends to donate 2% of gross revenue to a community project selected by the Board. The project will be one that is predominately conducted within the City of Yarra and will not necessarily have an environmental focus. Details of the project selected will be included on the YCS website.

Dividend and Capital Return Policy of YCS. On the assumption that the financial returns for the project are generally in accordance with plan, YCS will pay an annual unfranked dividend to shareholders similar to a competitive term deposit rate of return. It is the intention of the YCS Directors that capital will be returned to shareholders annually and as quickly as is financially prudent. Both the dividend and the return of capital requires formal approval by members at the annual general meeting of shareholders.

⁶ See footnote 2 above

Yarra Community Solar Anticipated Financial Outcome in a full year

Once the equipment is installed and operating the financial affairs of YCS should be straight forward and a full year's Profit and Loss Statement for a 90 kW system would look something like -

	\$
Sale of Electricity	31,320
Membership Subscriptions	510
Total Income	31,830
Less Operating Costs	
Administration	5,500
Audit fees	1,500
Maintenance	1,665
Depreciation	14,520
Community Fund	637
Other costs	1,000
Total Operating Costs	24,822
Net Profit	7,008
Less Tax Payable	242
Net Profit after Tax	6,766

Notes

1. Other costs includes an allowance for advertising, directors insurance, fees for lodging returns with Consumer Affairs Victoria and any unanticipated costs.
2. Administration costs and equipment maintenance would be the subject of supplier agreements.
3. Each year YCS will make a Community Fund payment equal to 2% of revenue to a community organisation providing services in the City of Yarra.
4. YCS pays tax at a rate of 28.5% however the tax payable is significantly less than 28.5% of net profit (\$1,997) due to tax depreciation provisions available to small businesses.
5. The cash surplus anticipated in the first year is significantly greater than Net Profit after Tax as Depreciation is a non-cash expense.

Appendix two:

AER Statement of Approach: Regulation of alternative energy sellers under National Energy Retail Law pp 6-8

2.1 Principles for regulating alternative energy sellers

There are many and substantial differences in the scale, scope and nature of the services energy sellers provide and this should be reflected in the way businesses are regulated. While authorisations are appropriate for many types of energy selling there are others where the costs of authorisation outweigh any benefits to customers and cannot be justified. In these instances exemptions may be appropriate.

Our approach to regulating energy sellers (“traditional” and “non-traditional”) is informed by the policy principles, exempt seller related factors and customer related

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factors outlined in the *Retail Law*.⁵ These principles and factors guide our decisions on whether a business needs to be authorised or exempted to sell energy and, if an exemption is considered appropriate, the type of exemption that should apply and the conditions that should attach to them.

The *Retail Law* also enables us to consider any other exempt seller and customer related matter we consider relevant.⁶ Other factors we consider important are:

The nature of the service provided to the customers, that is, whether the service is optional or discretionary

This is important because it helps determine the effect that disconnection by the energy seller will have on a customer’s access to reliable energy supply. We consider that an authorisation is necessary in situations where customers need the complete set of consumer protections under the *Retail Law*, for example where a service carries the possibility that a customer’s general energy supply could be disconnected. However, customers do not need the same level of protection from an energy seller where there is no risk of this happening, for instance where a seller is providing an optional, discretionary service to customers.

Regulation fit for purpose

The AER has a range of tools available to regulate energy sellers—from retailer authorisations (which have a full application process and full range of obligations attached) through to deemed exemptions (which carry very little regulatory risk and reflect a lesser need for regulatory oversight)—depending on the sellers’ circumstances. Of these, an authorisation provides the greatest level of protection for customers but is clearly the most onerous for sellers. If the full range of consumer protections is not necessary for customers receiving a particular type of service, a lesser level of regulation may be appropriate and an exemption may be sufficient.

Flexibility

The alternative energy market is evolving rapidly and our regulatory approach should support—not hinder—market innovation. Our approach to regulation should be flexible and pragmatic and the level of regulation applied to a business (obligations, as well as entry criteria) need to be appropriate for the type of energy selling undertaken.

Not duplicating existing legislation

Conditions under an individual exemption can be tailored to complement protections under other relevant legislative frameworks but should not duplicate them. We

⁵ Sections 114, 115, and 116, respectively, of the *Retail Law*.

⁶ Sections 115 (1)(g) and 116 (e), respectively, of the *Retail Law*

consider that uniform protections for customers are retained where a customer continues to purchase energy from an authorised retailer. We also note that customers have access to broad protections under other regulatory frameworks such as:

- the *Consumer and Competition Act 2010*, which deals with misleading, deceptive or unconscionable conduct
- the Australian Consumer Law which deals with unfair contract terms, marketing, warranties and guarantees
- State and territory fair trading legislation, which provides jurisdictional agencies with a role in dispute resolution and complaints.

The *Retail Law* enables us to give such weight to any aspect of the principles and factors as we consider appropriate in the circumstances.⁷ The principles and factors, including those outlined above, should be read in conjunction with one another and not in isolation—no one principle or factor is a defining principle or factor in all instances, but may be in others. Applications are considered on a case-by-case basis and while we aim to be consistent, we are not bound by precedent.

Appendix three:

VCSA recommended Amendments to draft Licence proposed by the Essential Services Commission (ESC)

We understand that making the changes described below to the licence proposed by ESC would require changes to Division 5 of the Electricity Industry Act Victoria 2000. This process, if successful, would further delay the implementation of community solar in Victoria.

However, if a licence is to be issued to a Community Solar Organisation our preference is that the conditions imposed be the same as those applicable to a licence exemption issued by the Australian Energy Regulator. Therefore the licence need only contain the following requirements -

"The licence is subject to the following conditions:

(a) that the Licensee must continue to be a Community Solar Organisation

(b) that the Licensee must not register in the wholesale market for the purposes of purchasing energy

(c) that the Licensee must not be the financially responsible market participant for their customers' premises and that participant be an authorised retailer

The Licensee must inform its customers in plain English that:

- the Licensee is not an authorised retailer
- the Licensee is not bound by all obligations under the Retail Code that apply to an authorised seller
- the Licensee is bound by all other relevant customer protection legislation including Australian Consumer Law, the Consumer and Competition Act 2010 and Fair Trading Act 2012 (Victoria) "

Little else needs to be included in the licence other than the name of the organisation to whom it is issued and some other formalities. In that way the ESC licence would be very similar to an AER licence exemption, which is our preferred position.

Proposed Amendments to the draft licence

Our second preference is that the structure of the draft licence provided by ESC be preserved but amended. These amendments are described below.

It is likely that the activities of a small scale community solar project would constitute generation, supply and selling of electricity within the meaning of the Electricity Industry Act Victoria 2000. A number of draft licences have been included on the ESC website for review. Consistent with the comments made earlier in our submission the VCSA proposes a number of changes to the licences and these are provided below. The changes described below refer to the draft titled "Small-Scale Licence to Generate, Supply, Distribute or Supply and Sell Electricity" taken from the ERSC website.

Clauses 1 and 2 - No change

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Clause 3 - Replace with -

The licence is subject to the following conditions:

(a) that the Licensee must continue to be a Community Solar Organisation

(b) that the Licensee must not register in the wholesale market for the purposes of purchasing energy

(c) that the Licensee must not be the financially responsible market participant for their customers' premises and that participant be an authorised retailer

Clause 4 - Delete

Clauses 5 - No change

Clause 6 - Delete sub clauses 6.1 (c) and (d)

Clauses 7 and 8 - No change

Clause 9 - Delete

Clause 10 - No change

Clauses 11 to 17 - Delete

Clause 18 - Delete definitions that are no longer referred to in the licence. Add in the following definition.

Community Solar Organisation (CSO) - A CSO is any organisation deemed by the Essential Services Commission to be a CSO. In determining whether an organisation is a CSO the ESC will consider, but not be limited to, the following characteristics

- Organisational objectives focus on the environment and the community - building community awareness of the advantages of renewable energy, mobilising community involvement in local enterprises, securing local employment, increasing access to solar power and accelerating the take-up of renewable energy
- Capital funds are obtained from the community
- The funds raised are used to install an energy generation (and potentially storage) system on the roof of a third party organisation,
- The systems are not technically complex and generate less than 100kW of power
- Electricity generated by the roof solar system is used on-site by the third party "roof host", and is only a proportion of the roof host's daily demand
- The roof host makes payments to the Community Solar Organisation based on the solar energy consumed in accordance with a Solar Power Purchase Agreement
- All work undertaken by the Community Solar Organisation is usually through contracts with third parties including:
 - Solar system planning and installation

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- Solar system maintenance
- Financial auditing
- Insurance
- Back-office administration

Clause 19 - No change

Schedules 1, 2 and 3 - Delete

Add in an additional clause -

The Licensee must inform its customers in plain English that:

- the Licensee is not an authorised retailer
- the Licensee is not bound by all obligations under the Retail Code that apply to an authorised seller
- the Licensee is bound by all other relevant customer protection legislation including Australian Consumer Law, the Consumer and Competition Act 2010 and Fair Trading Act 2012 (Victoria)

Appendix four: Issues with Electricity Industry Codes

The following requirements in these codes would apply to CSOs and when taken in total mean that no responsible CSO would apply for the proposed licence. The numbers at the end of each item listed refer to the clause in the respective Codes. This may not be a complete list.

Electricity Distribution Code

1. Develop and implement plans for the acquisition, creation, maintenance, operation, refurbishment, repair and disposal of its distribution systems (3.1(b))
2. Develop contingency plans to deal with events that have a low probability, are realistic and would have a substantial impact on customers (3.1(c))
3. If the CSO has an installation in the Melbourne CBD we would need to take steps to strengthen the security of supply in the Melbourne CBD (3.1A) and we could be required by the Commission to provide a plan within 30 days of a request.
4. Work with other Distributors to submit a joint annual Transmission Connection Planning Report (3.4.1)
5. Annually provide to the Commission a very detailed Distribution System Planning Report covering 5 years (3.5)
6. Specific technical requirements (Section 4)
7. Publish our targets for reliability of supply for the coming year on website and in a newspaper (5.1.1)
8. Pay our customer \$20 if 15 minutes late for an appointment within an appointment window (6.1.1)
9. Pay \$50 a day (up to \$250) if we do not supply electricity to the customer on an agreed day (6.2)
10. Make various supply restoration payments or low reliability payments if there are unplanned interruptions up to \$300 (6.3.1)
11. Develop and periodically test emergency response plans in coordination with relevant organisations (8.1)
12. Provide a customer charter at least once every 5 years (9.1.2)
13. Notify customers about our role in relation to maintenance of supply, emergencies and restoration after interruptions once a year (9.1.2A)
14. Twice advise a customer that their future tariffs may be set on the basis of time of use tariffs (9.1.14)
15. Handle complaints in accordance with the relevant Australian Standard and include information on this process in our customer charter (10.1.1) and tell the customer that they have the right to raise the complaint to a higher level of management (10.1.2)
16. If we breach this Code and it is not trivial and /or could have a material impact on the customer we need to notify the customer and investigate non compliance (11.2.1)
17. Disconnect supply to a customer's address if the customer requests it (12.4)
18. Must comply with the Electricity Customer Metering Code (14)

The generic exemption for Distribution Licences contains the requirement to comply with the relevant clauses of the Distribution Code. If an organisation is exempt from holding a Distribution Licence and the conditions of that exemption require compliance with the Distribution Code then compliance with most of the above issues is specifically excluded (1.3.5).

Energy Retail Code Version 11

1. Need to be able to demonstrate explicit informed consent to all matters relevant to the consent of the customer. Retained for 2 years and can be provided to the customer or the Commission. (3C and D)
2. If this can't be proven the transaction is void. (3E)
3. Need to provide a Standard Retail Contract (12) or a market retail contract (14)
4. Must have a standing offer on our website and on internet site specified by the Minister (15A 1)
5. Cannot ask for customer information before we provide a Price and Information product sheet and in a specified manner with specific details (15B) that complies with but not limited to, Privacy Act, Competition and Consumer Act, Australian Consumer Law and Fair Trading Act (15F)
6. Offer must include specific information and a cross reference to the youchoice.vic.gov.au website
7. Have an energy price fact sheet on our website (15D)
8. Provide detailed information concerning supplier obligation and customer rights once a customer requests the sale of energy under a standing offer, information about government energy charge rebate , concessions or relief schemes and information about the availability of interpreter services in appropriate languages. (19 (1))
9. Inform the distributor for the premises that the retailer has a new customer (19 (2))
10. Contents of bill to include bill benchmarking information and a 24 hour telephone number for fault enquiries and emergencies, contact details for interpreter services in community languages (25)
11. Greenhouse gas emission data needs to be provided in an approved and detailed manner (25A)
12. Review a bill if requested by a customer in accordance with the retailer's standard complaints and dispute resolution procedures and inform the customer of the outcome in accordance with the time limit contained in the procedures (29 (2) and (3))
13. Retailer must inform the customer they can appeal any decision by the retailer to the energy ombudsman (29 (7))
14. Must accept payment in any of the following ways - in person, by telephone, by mail, by direct debit, by EFT (32 (1))
15. Customer can request a final bill (35)
16. Customer can withdraw from a contract within 10 days of signing (47)
17. Contract must have a specified end date and the customer must be informed no earlier than 40 days but no less than 20 days before this date that the contract will end (48)
18. Publish on website a summary of the rights, entitlements and obligations to customers including standard complaints and dispute resolution procedure and contact details of the industry ombudsman (56)
19. Must keep records for 12 months of all energy marketing activities including details of visits and telephone calls made (68)
20. Must develop a customer hardship policy and publish it on website - applicable to residential customers (71)